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ROSETTA BARTLETT)	COURT OF COMMON PLEAS
Plaintiff)	BERKS COUNTY
v.)	
)	CIVIL DIVISION
PENNSYLVANIA BLUE SHIELD)	NO. 02-5967
Defendant)	

DEFENDANT'S NOTICE OF REMOVAL

TO: Stanley Brassington, Esquire
120 East Main Street
Schuylkill Haven, PA 17972

Please take notice that defendant, by and through its counsel, Post & Schell, P.C., has filed a Notice in the United States District Court for the Eastern District of Pennsylvania for removal of a civil action pursuant to 28 U.S.C. §1441, et seq. now pending in the Court of Common Pleas, Berks County, docketed at No. 02-5967. Said case qualifies under federal question jurisdiction pursuant to 28 U.S.C. §1331. Specifically, the action is an action for health benefits pursuant to 29 U.S.C. §1132(a).

POST & SCHELL, P.C.

BY _____
RICHARD L. McMONIGLE, JR.
STEVEN J. SCHILDT, ESQ.
Attorneys for Defendant

DATE: July 9, 2002

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROSETTA BARTLETT)	CIVIL ACTION
)	
Plaintiff)	
v.)	NO.
)	
PENNSYLVANIA BLUE SHIELD)	
)	
Defendant)	

DEFENDANT’S PETITION FOR REMOVAL

Defendant Pennsylvania Blue Shield, by and through its attorneys, Post & Schell, P.C., hereby removes the above-captioned action, which is presently in the Berks County Court of Common Pleas (docketed at Number 02-5967), pursuant to 28 U.S.C. §1441 et seq. In support thereof, defendant avers as follows:

1. On June 11, 2002, defendant received plaintiff’s Complaint. See plaintiff’s Complaint attached hereto as Exhibit “A”.

2. Plaintiff’s complaint arises out of a claim against defendant for chiropractic benefits under an employee benefits plan governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq. (ERISA). Said plan was provided to plaintiff by her employer, Dana Corporation.

3. Plaintiff herself states in her complaint that “Plaintiff received the said health coverage (Blue Shield’s Beneflex Plan) through her employer Dana.” See plaintiff’s Complaint at paragraph 9.

4. Plaintiff’s complaint presents an action pursuant to 29 U.S.C. §1132(a).

5. Because the plan at issue is part of an employee benefits plan, any dispute thereunder is governed by ERISA, which invokes federal question jurisdiction and supersedes

any and all related state laws pursuant to 29 U.S.C. § 1144. See, e.g., Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58 (1987); Pryzbowski v. U.S. Healthcare, Inc., 245 F.3d 266 (3d Cir. 2001); Sopak v. Highmark, Inc., 2002 U.S. Dist. LEXIS 10317 (W.D. Pa. 2002).

6. Accordingly, federal question jurisdiction exists over the instant matter pursuant to 28 U.S.C. § 1331.

7. This Notice of Removal, and related papers, has been filed within 30 days of the date of service of the Complaint and is therefore timely under 28 U.S.C. §1446(b).

8. Defendant has also filed copies of this Notice of Removal, and related papers, with the Prothonotary for the Berks County Court of Common Pleas in order to effect removal of this action pursuant to 28 U.S.C. §1446(d).

WHEREFORE, pursuant to 28 U.S.C. §1441, et seq., defendant respectfully requests that this Honorable Court honor the removal of the above-captioned action, which is presently docketed at Number 02-5967 in the Berks County Court of Common Pleas, to the United States District Court for the Eastern District of Pennsylvania.

POST & SCHELL, P.C.

BY: _____
RICHARD L. McMONIGLE, JR.
STEVEN J. SCHILDT, ESQ.
Attorneys for Defendant
1800 JFK Blvd., 19th Floor
Philadelphia, PA 19103
(215) 587-1089

DATE: July 9, 2002

CERTIFICATE OF SERVICE AND FILING

I hereby certify that the attached Petition for Removal in the foregoing matter has been served/filed this day via regular mail to the following person(s):

Stanley Brassington, Esquire
120 East Main Street
Schuylkill Haven, PA 17972

Civil Filings Office
Berks County Court of Common Pleas
633 Court Street
Reading, PA 19601

POST & SCHELL, P.C.

BY: _____
STEVEN SCHILDT

DATE: _____